IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8568 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRADIP PETROLEUM CO.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8568 of 2004

MR TUSHAR MEHTA for Petitioner No. 1

Mr. Pradip Bhate, AGP for Respondent No. 1-3

MR KAPIL K ACHARYA for Respondent No. 4

NOTICE SERVED BY DS for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 24/11/2004

ORAL JUDGEMENT

Rule. Shri Pradip Bhate, learned AGP waives service of Rule on behalf of respondents No. 1 to 3 and 5 and Shri Acharya, ld. advocate waives service of

respondent No.4. With the consent of parties the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the respondent No.1 dated 17th January 2004 in Revision Application No. 17 of 2003 purported to have been passed under Regulation 12 of The Gujarat Essential Articles [Licensing, Control and Stock Declaration] Order, 1981 by which the Deputy Secretary has confirmed the order passed by the Collector, Surendranagar, dated 29th March 2003 by which the petitioner was directed to pay an amount of Rs. 24,925 to the respondent No.4 herein being transportation charges.

3. Shri Tushar Mehta, learned advocate appearing on behalf of the petitioner has submitted that as the Collector had no jurisdiction to decide the internal dispute between two individuals with regard to transportation charges appeal itself was not maintainable before the Collector and therefore the order passed by the Collector, Surendranagar was without jurisdiction and in turn the Deputy Secretary has materially erred in confirming the said order and dismissed the revision application preferred by the petitioner. He has submitted that the Collector, Surendranagar, has materially erred in setting aside the order passed by the D.S.O., Surendranagar rejecting the application of the respondent No.4 to pay transportation charges. Shri Acharya, ld. advocate appearing on behalf of respondent No.4 has failed to satisfy with regard to maintainability of appeal before the Collector, Surendranagar, and/or even application before the D.S.O. with regard to transportation charges. The dispute with regard to transportation charges between the two individuals was not required to be considered by the D.S.O. and/or Collector. Shri Bhate, learned AGP has also failed to satisfy with regard to maintainability of appeal before the Collector and/or application before the D.S.O. with regard to transportation charges between the petitioner and the respondent No.4.

4. Considering the aforesaid circumstances and considering the provisions of The Gujarat Essential Articles [Licensing, Control and Stock Declaration] Order, 1981, the order passed by the Collector, Surendranagar dated 29th March 2003 in Appeal No. 2 of 2002 as well as the judgment and order passed by the Deputy Secretary, respondent No.1 herein dated 17th January 2004 in Revision Application No. 17 of 2003

require to be quashed and set aside and are hereby quashed and set aside. As the dispute is with regard to transportation charges which could not have been considered and decided by the D.S.O., Collector, and/or Deputy Secretary, it will be open for the respondent No.4 to initiate separate proceedings for recovery of the amount with regard to transportation charges in accordance with law before appropriate forum and as and whcn such proceedings are initiated the same may be considered in accordance with law and on merits without in any way being influenced by the order passed by the DSO, Surendranagar, dated 7th October 2002 and other orders. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.